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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LAURIE THORSON,

Plaintiff and Appellant,

v.

JOSEPH BRADVICA, as Trustee, etc.

Defendant and Respondent.

2d Civ. No. B289612
(Super. Ct. No. 56-2017-00491558-PR-TR-OXN
(Ventura County)

Appellant Laurie Thorson and respondent Joseph Bradvica are the children of Betty Jane Smith. Bradvica is the trustee of Smith's Trust (Trust). After Smith's death, Thorson sought to set aside the Trust based upon lack of testamentary capacity, undue influence, financial elder abuse, and intentional interference with an expected inheritance.

Following a four-day trial, the probate court entered judgment in Bradvica's favor. Thorson, who is self-represented, argues the court erred by granting Bradvica's motion for nonsuit as to her claim for intentional interference with an expected

inheritance, and by granting his motion for judgment as to the three remaining causes of action. She also contends the court erred by ordering her to pay one-half of the court reporter fees.

Thorson's argument regarding payment of the court reporter fees may have had merit had she sought and obtained a pretrial fee waiver. The Supreme Court has held that a litigant who "qualifies for a waiver of initial court filing fees is entitled, as well, to a waiver of fees for the attendance of an official court reporter at a hearing or trial." (*Jameson v. Desta* (2018) 5 Cal.5th 594, 598 (*Jameson*).) This rule does not apply to Thorson because she did not obtain a fee waiver until the appeal was filed.

Thorson's remaining contentions challenge the probate court's evidentiary rulings, its grant of a nonsuit, and the sufficiency of the evidence to support its findings. These contentions require a review of the entire record, including the testimony and arguments presented at trial. Thorson's failure to provide a reporter's transcript, agreed statement, or settled statement is fatal to her appeal. Without a proper record to review the judgment, we must presume the judgment was correct. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Smith executed the Trust document on February 4, 2015. She died on September 16, 2016. Bradvica succeeded his mother as trustee upon her death.

The primary beneficiary of the Trust is Smith's oldest son, Charles Daniel Marquez, who is not a party to this action. Marquez receives a monthly allowance. Bradvica is the beneficiary of 10 percent of the Trust residue and the contingent beneficiary of Marquez's share should he predecease Bradvica.

Thorson was disinherited entirely. Thorson and Smith had a volatile relationship and were estranged.

In 2017, Thorson filed a petition to determine the validity of the Trust. She alleged claims of lack of testamentary capacity, undue influence, financial elder abuse, and intentional interference with an expected inheritance.

Trial began on March 19, 2018. Thorson previously had been represented by counsel, but he substituted out of the case before trial, causing Thorson to appear in pro per. After Thorson made her opening statement, Bradvica moved for a nonsuit as to all four causes of action. The probate court granted the motion as to the claim for intentional interference with an expected inheritance. The court ruled that the cause of action is not an available remedy as a matter of law since Thorson is a natural heir and had adequate remedies available to her under the Probate Code.

In her case-in-chief, Thorson introduced both oral and documentary evidence. Thorson, Bradvica, and two attorneys, Lisa C. Burch and Leonard Alexander, testified.

After Thorson rested, Bradvica filed a written motion for judgment as to the remaining three causes of action. Thorson objected. The probate court asked Thorson if she had any further evidence to present. When she said she had none, the court orally granted Bradvica's motion in its entirety.

Thorson filed a notice of appeal on April 23, 2018, and was granted a fee waiver for various court fees and costs. (Cal. Rules of Court, rules 3.55, 8.818.)

On May 10, 2018, the probate court issued a 19-page statement of decision and entered judgment for Bradvica based upon its decision. In sum, the court determined that Smith had

testamentary capacity at the time Thorson attempted to obtain a conservatorship over her mother on November 13, 2012. It found that "there was no admissible evidence provided that showed that her capacity had changed in the intervening time period from November 13, 2012 to February 4, 2015."

With respect to the undue influence claim, the probate court concluded "[t]here's absolutely . . . no evidence that Mr. Bradvica overcame Ms. Smith's free will in making a decision about what to do with her assets upon her death. Again, the operative date for any undue influence to be examined is February 4, 2015. From that date on, whatever it was, the relationship between Mr. Bradvica and Ms. Smith is frankly irrelevant as to whether or not there was an exercise of free will, the use of excessive persuasion, or any of that as of February 4, 2015."

The probate court also granted judgment on the financial elder abuse claim. It acknowledged that both Marquez and Bradvica had been previously convicted of elder abuse, but noted that those convictions occurred well before the execution of the Trust and related estate planning documents. The court determined that Smith had testamentary capacity at that time.

The probate court's order obligated Thorson to "pay one-half of the court reporter fees incurred over the last five days." It further stated that "[t]he Trust's half of the fees would be recoverable by the trustee as a court cost."

On May 29, 2018, Thorson filed an amended notice of appeal. The record on appeal consists of a two-volume clerk's transcript plus trial exhibits. The record reflects that a court reporter was present during trial, but Thorson did not designate a reporter's transcript as part of the record. In her designation of

record, Thorson elected to proceed "WITHOUT a record of the oral proceedings in the superior court." Thorson acknowledged in her designation of record that "without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings."

DISCUSSION

Thorson's opening brief contains six assignments of error. Thorson challenges the probate court's findings that (1) Smith had capacity to execute her Trust and that Probate Code section 259 did not apply; (2) Thorson did not provide any evidence that Smith lacked capacity; (3) Bradvica was not liable for financial elder abuse; (4) Bradvica was entitled to a nonsuit as to Thorson's claim for intentional interference with an expected inheritance; (5) Alexander's testimony provided extensive evidence that Smith had appropriate capacity to execute her Trust; and (6) Thorson is obligated to pay one-half of the court reporter fees. Only the sixth contention is properly before us.

Thorson Has Failed to Provide an Adequate Record

To support her first five contentions, Thorson submits her own version of what occurred at trial. She recites her recollection of the testimony and argues, among other things, that the probate court abused its discretion by excluding certain evidence. In the absence of a reporter's transcript or suitable substitute, we cannot consider these arguments. It is an "'immutable'" rule of appellate procedure that "'if it is not in the record, it did not happen.'" (*Jameson*, *supra*, 5 Cal.5th at p. 609, fn. 11.)

"'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to

support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) When reviewing a trial court ruling, we do not reweigh the evidence, make our own factual inferences that contradict those of the trial court, or second guess the trial court's credibility determinations. (*Citizens Business Bank v. Gevorgian* (2013) 218 Cal.App.4th 602, 613.)

As a result, "[w]here no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters.* To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.] The effect of this rule is that an appellant who attacks a judgment but supplies no reporter's transcript will be precluded from raising an argument as to the sufficiency of the evidence." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992 (*Fain*); *Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.)

Thorson's first five contentions challenge the sufficiency of the evidence supporting the probate court's findings, discretionary evidentiary rulings made by the court, and its decision to grant a nonsuit on the intentional interference with an expected inheritance cause of action. Where, as here, the "'record is inadequate for meaningful review [of these issues], the appellant defaults and the decision of the trial court should be affirmed.' [Citations.]" (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) When no reporter's transcript or suitable substitute is provided on appeal, it is

presumed the unreported testimony would demonstrate the absence of error. (*Fain*, *supra*, 75 Cal.App.4th at p. 992.)

Here, the trial court's statement of decision indicated the evidence was disputed. The record on appeal does not include a transcript of the trial at which the evidence was taken. Nor does it include a transcript of Thorson's opening statement, which precipitated the grant of a nonsuit on her claim for intentional interference with an expected inheritance.[1] Thus, we must presume the evidence and argument supported the trial court's findings, including the finding that Smith had testamentary capacity to execute the Trust on February 4, 2015. Thorson has failed to provide a record on appeal that demonstrates that the evidence and argument presented at trial compelled a finding in her favor as a matter of law.

The Probate Court Did Not Err by Ordering Thorson to Pay the Court Reporter Fees

Thorson's sixth assignment of error is to the probate court's order requiring her to pay one-half of the court reporter fees. She claims this was improper because she received a fee waiver. She is incorrect.

In *Jameson*, the plaintiff, a prisoner, brought a civil suit against a prison physician. (*Jameson*, *supra*, 5 Cal.5th at p. 599.) He was granted a fee waiver. (*Id.* at p. 600.) Ten days before trial, the plaintiff was informed that the court no longer provided

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[1] In reviewing a nonsuit after the conclusion of an opening statement, we "'must accept all facts asserted in the opening statement as true and must indulge every legitimate inference which may be drawn from those facts. [Citations.]'" (*Galanek v. Wismar* (1999) 68 Cal.App.4th 1417, 1424.) We cannot perform this analysis without a record of the facts asserted in Thorson's opening statement.

reporters for civil trials, and that the parties would have to provide their own reporter. The court noted that under the superior court's policy, all parties, including those with fee waivers, are responsible for the fees and costs associated with reporter services. (*Ibid.*)

The Supreme Court reversed, concluding that when a superior court adopts a policy of not making reporters available in civil cases, it must provide an exception for parties granted fee waivers. (*Jameson*, *supra*, 5 Cal.5th at p. 623.) As such, the trial court erred in failing to make an official reporter available to the plaintiff upon request. (*Ibid.*; *Dogan v. Comanche Hills Apartments, Inc.* (2019) 31 Cal.App.5th 566, 570.)

Jameson has no application here. Although Thorson obtained a fee waiver when she filed her notice of appeal, there is no indication that she obtained a fee waiver in the probate court. Moreover, nothing in the limited record presented suggests that she asked the court to provide an official court reporter free of charge. (See *Jameson*, *supra*, 5 Cal.5th at p. 623.)

DISPOSITION

The judgment is affirmed. Respondent shall recover his costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J. TANGEMAN, J.

Roger Picquet and Vincent J. O'Neill, Judges
Superior Court County of Ventura

Laurie Thorson, in pro. per., for Plaintiff and Appellant.

Alexander, Clayton & Wilson, Leonard Alexander and Lisa C. Burch for Defendant and Respondent.